

BEFORE THE

OCT - 6 1993

Federal Communications Commission

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

WASHINGTON, D.C.

In the Matter of)

Implementation of the)
Cable Television Consumer)
Protection and Competition)
Act of 1992)

MM Docket No. 92-259

Broadcast Signal Carriage Issues)

**OPPOSITION OF
TIME WARNER ENTERTAINMENT COMPANY, L.P.,
TO EMERGENCY MOTION FOR PARTIAL STAY**

Time Warner Entertainment Company, L.P., by its attorneys, hereby submits its opposition to the 29 September 1993 "Emergency Motion for Partial Stay" filed on behalf of the Wireless Cable Association ("WCA") and the National Private Cable Association ("NPCA"), which seeks a stay of the effective date of Section 76.64(e) of the Commission's Rules.

The Commission has already entered an order without soliciting or waiting for timely oppositions. Stay Order, FCC 93-467 (5 Oct. 1993). The Commission entertained the motion on an emergency basis (apparently under Section 1.298(a) of its rules) despite the absence of any showing as to why the movants did not sooner request the action sought in their motion and without making the finding as to "irreparable injury" or public interest required by Section 1.298(a).

In light of the Commission's 5 October order, this opposition, although timely filed under Sections 1.43 and 1.45(d) of the Commission's rules, is submitted to complete the record on these issues. Its purpose is to focus the Commission's attention on a fundamental error of fact on which the motion and the 5 October stay order are premised. In Paragraph 3 of its 5 October Stay Order, the Commission apparently accepts the premise that "wireless cable" and MATV operators provide broadcast signals "free of charge" to their subscribers. This service is apparently deemed to be "free" because no explicit charge is made for such services on the subscriber's bill. Thus, WCA and NPCA would have the application of the Commission's rule turn on whether the MATV operator chooses to characterize its monthly charge as one covering all services or rather self-servingly characterizes the broadcast signal portion of the service as "free." This is a distinction without a difference.

The application of the Commission's rules should not depend on how the MATV operator chooses to format its bill for service. Rather, application of the rule should turn on the underlying economic realities of the transaction. An MATV or wireless cable operator will not go to the expense of providing an antenna and conveying broadcast signals over that antenna unless it is making money by doing so. No matter how the bill is formatted, a commercial enterprise such as an MATV or wireless cable operator is not likely to be engaged in providing "free" service to anyone. The Commission thus cannot reasonably premise its

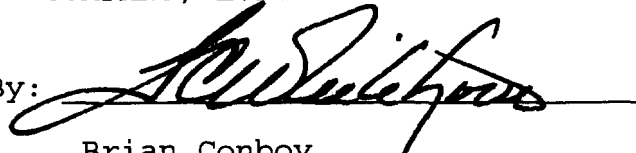
regulations -- or a stay of those regulations -- on the assumption that service is being provided "free of charge".

Thus, for the reasons stated herein and in Time Warner's 7 June 1993 Opposition to Petitions for Reconsideration or Clarification in this proceeding, the Commission should have denied the stay and should deny the petitions for reconsideration of Section 76.64(e) of the rules.

Respectfully submitted,

TIME WARNER ENTERTAINMENT
COMPANY, L.P.

By:



Brian Conboy
Theodore Case Whitehouse
Jennifer A. Donaldson

WILLKIE FARR & GALLAGHER
Three Lafayette Centre
1155 21st Street, N.W.
Washington, D.C. 20036
(202) 328-8000

Robert D. Joffe
CRAVATH, SWAINE & MOORE
Worldwide Plaza
825 Eighth Avenue
New York, N.Y. 10019
(212) 474-1000

Its Attorneys

Dated: Washington, D.C.
6 October 1993

CERTIFICATE OF SERVICE

I hereby certify that, on October 6, 1993, copies of the foregoing "Opposition of Time Warner Entertainment Company, L.P., to Emergency Motion for Partial Stay" were served by First Class Mail, postage prepaid, to the following:

James A. Finch
Vice President
Standard Tobacco Company, Inc.
P. O. Box 100
Maysville, KY 41056

William F. Hammett, P.E.
President
Hammett & Edison, Inc.
Consulting Engineers
Box 280068
San Francisco, CA 94128

Patricia M. Ryan
Director of Libraries/Cable Television
Board of Commissioners of the Township
of Lower Marion
75 East Lancaster Avenue
Ardmore, PA 19003

Cary S. Tepper, Esq.
Meyer Faller Weisman & Rosenberg, P.C.
4400 Jenifer Street, N.W.
Suite 380
Washington, DC 20015

David E. Tripp
Vice President
and Deputy Chief Legal Officer
Spectradyne, Inc.
1501 North Plano Road
Richardson, TX 75081

Grier C. Raclin
Gardner Carton & Douglas
1301 K Street, N.W.
Suite 900 East Tower
Washington, DC 20005

John D. Siever
John D. Thomas
Joseph R. Reifer
Cole Raywid & Braverman
1919 Pennsylvania Avenue, N.W.
Suite 200
Washington, DC 20006

Charles S. Walsh
Stuart F. Feldstein
Arthur Harding
Christopher Wood
Fleischman and Walsh
1400 16th Street, N.W.
Washington, DC 20036

Craig J. Blakeley
R. Clark Wadlow
Robert A. Beizer
Sidley & Austin
1722 I Street, N.W.
Washington, DC 20006

Randy Wright
General Manager
Agape Church, Inc.
P. O. Box 22007
Little Rock, AR 72221

John H. Midlen, Jr., Esq.
Midlen & Guillot, Chartered
3238 Prospect Street, N.W.
Washington, DC 20007

Herbert D. Miller, Jr.
Arthur B. Goodkind
Koteen & Naftlain
Suite 1000
1150 Connecticut Avenue, N.W.
Washington, DC 20036

Stephen R. Ross
Ross & Hardies
888 16th Street, N.W.
3rd Floor
Washington, DC 20006

David G. Brugger
President
Marilyn Mohrman-Gillis
General Counsel
American Public Television Stations
1350 Connecticut Avenue, N.W.
Washington, DC 20036

James J. Popham
Vice President, General Counsel
Association of Independent Television
Stations, Inc.
1200 18th Street, N.W.
Suite 502
Washington, DC 20036

Debra L. Lee
Executive Vice President
and General Counsel
Black Entertainment Television
1232 31st Street, N.W.
Washington, DC 20007

Kristin C. Gerlach
Senior General Attorney
Law and Regulation
Capital Cities/ABC, Inc.
77 W. 66th Street
New York, NY 10023

Randolph H. Knight
President
Caribbean Communications Corp.
One Beltgen Place
St. Thomas, VI 00802

Mark W. Johnson
1634 I Street, N.W.
Washington, DC 20006

Robert G. Allen
Vice President/General Manager
Cedar Rapids Television Company
Box 816
Cedar Rapids, IA 52401

Brenda L. Fox
Dow Lohnes & Albertson
1255 23rd Street, N.W.
Washington, DC 20037

Stephen R. Effros
President
Community Antenna Television Association, Inc.
3950 Chain Bridge Road
Fairfax, VA 22030

Henry A. Solomon
Haley Bader & Potts
4350 N. Fairfax Drive
Suite 900
Arlington, VA 22203

Sol Schildhause
Farrow, Schildhause & Wilson
1400 16th Street, N.W.
Suite 501
Washington, DC 20036

Robert J. Rini
Rini & Coran, P.C.
1350 Connecticut Avenue, N.W.
Suite 900
Washington, DC 20036

Bradley C. Stillman
Gene Kimmelman
Consumer Federation of America
1424 16th Street, N.W.
Washington, DC 20036

Robert J. Sachs
Senior Vice President
Continental Cablevision
Pilot House
Lewis Wharf
Boston, MA 02110

Frank W. Lloyd
Howard J. Symons
Lisa W. Schoenthaler
Mintz Levin Cohn Ferris Glovsky & Popeo, P.C.
701 Pennsylvania Avenue, N.W.
Suite 900
Washington, DC 20004

Allan A. Tuttle
Garret G. Rasmussen
Patton Boggs & Blow
2550 M Street, N.W.
Washington, DC 20037

Barbara K. Gardner
Levinthal Senter & Lerman
2000 K Street, N.W.
Suite 600
Washington, DC 20006

Edwin M. Dersow
Executive Vice President and General Counsel
ESPN, Inc.
605 3rd Avenue
New York, NY 10158-0180

Molly Pauker, Esq.
Vice President -- Corporate and Legal Affairs
Fox Television Stations, Inc.
5151 Wisconsin Avenue, N.W.
Washington, DC 20016

Robert B. Jacobi
Cohn & Marks
Suite 600
1333 New Hampshire Avenue, N.W.
Washington, DC 20036

Tom W. Davidson
Margaret L. Tobey
Michael D. Beraga
Michael S. Ray
Akin Gump Strauss Hauer & Feld
1333 New Hampshire Avenue, N.W.
Suite 400
Washington, DC 20036

Jeffrey Moreno
James R. Hobson
Donelan, Cleary & Wood
1275 K Street, N.W.
Suite 850
Washington, DC 20005

Louise I. Isakoff, Esq.
General Counsel
International Family Entertainment, Inc.
1000 Centerville Turnpike
Virginia Beach, VA 23463

Timothy L. Crosby
Vice President
San Jacinto Television Corp.
Licensee of KTFH-TV
256 N. Belt Street
Suite 49
Houston, TX 77060

Henry M. Rivera
Ginsberg Feldman & Bress, Chartered
1250 Connecticut Avenue, N.W.
Suite 800
Washington, DC 20038

W. James McNaughton
90 Woodbridge Center Drive
Suite 610
Woodbridge, NJ 07095

John M. Schohl
Secretary and General Counsel
Malrite Communications Group Inc.
800 Skylight Office Tower
1660 W. 2nd Street
Cleveland, OH 44113

Gregory M. Schmidt
Covington & Burling
1201 Pennsylvania Avenue, N.W.
Washington, DC 20044

Marvin Rosenberg
Paul J. Feldman
Fletcher Heald & Hildreth
11th Floor
1300 N. 17th Street
Rosslyn, VA 22204

Dan J. Alpert
1250 Connecticut Avenue, N.W.
#700
Washington, DC 20036

Frances Seghers
Motion Picture Association of American
1600 I Street, N.W.
Washington, DC 20006

Jack N. Goodman
National Association of Broadcasters
1771 N Street, N.W.
Washington, DC 20036

Steffanie M. Phillips
Norman M. Sinel
Arnold & Porter
1200 New Hampshire Avenue, N.W.
Washington, DC 20036

Philip R. Hochberg
Mark J. Palchick
Baraff Koerner Olender & Hochberg, P.C.
5335 Wisconsin Avenue, N.W.
Suite 300
Washington, DC 20015

Howard Monderer
National Broadcasting Company, Inc.
Suite 930 North
1331 Pennsylvania Avenue, N.W.
Washington, DC 20004

Robert N. Silber
Corporate Attorney
National Captioning Institute Inc.
5203 Leesburg Pike
15th Floor
Falls Church, VA 22041

Daniel L. Brenner
National Cable Television Association
1724 Massachusetts Avenue, N.W.
Washington, DC 20036

John F. Sturm
Senior Vice President
Government, Legal & Public Policy
Newspaper Association of America
National Press Building
529 14th Street, N.W.
Suite 440
Washington, DC 20045

Shelley E. Harms
NYNEX
120 Bloomingdale Road
White Plains, NY 10605

Mark C. Ellison
G. Todd Hardy
Hardy & Ellison, P.C.
9306 Old Keene Mill Road
Suite 100
Burke, VA 22015

Dennis F. Begley
Reddy Begley & Martin
1001 22nd Street, N.W.
Suite 350
Washington, DC 20037

Andrew R. Paul
Senior Vice President
Government Affairs
Satellite Broadcasting and
Communications Association
225 Reinekers Lane
Alexandria, VA 22314

Charles J. Sennet
Tribune Broadcasting Company
435 North Michigan Avenue
Chicago, IL 60611

Joseph E. Dunne III
May & Dunne, Chartered
Suite 520
1000 Thomas Jefferson Street, N.W.
Washington, DC 20007

Roy F. Perkins, Jr.
Triplett & Associates Inc.
1724 Whitewood Lane
Herndon, VA 22070

Barry D. Wood
Jones Waldo Holbrook & McDonough, P.C.
Suite 900
2300 M Street, N.W.
Washington, DC 20037

Martin T. McCue
Vice President and General Counsel
United States Telephone Association
900 19th Street, N.W.
Suite 800
Washington, DC 20006-2105

Jeff Treeman
President
United Video, Inc.
3801 S. Sheridan Road
Tulsa, OK 74145

George H. Shapiro
Arent Fox Kintner Plotkin & Kahn
1050 Connecticut Avenue, N.W.
Washington, DC 20036

Edward Schor
Senior Vice President
General Counsel/Communications
Viacom International Inc.
1515 Broadway
New York, NY 10036

H. Gwen Marcus
Senior Vice President and General Counsel
Showtime Networks Inc.
1633 Broadway
New York, NY 10019

Paul J. Sinderbrand
Sinderbrand & Alexander
888-16th Street, N.W.
Suite 610
Washington, DC 20006-4103

Bruce D. Collins, Esq.
Vice President and General Counsel
National Cable Satellite Corporation
Suite 650
400 N. Capitol Street
Washington, DC 20001

James E. Palmer
Chairman
Township of Moorestown
111 West Second Street
Moorestown, NJ 08057

Dorothy Schrader
General Counsel
United States Copyright Office
Washington, DC 20559

Kenneth E. Hall
General Manager
WJB-TV Limited Partnership
8423 South U.S. 1
Fort Pierce, FL 34985

I. Fred Koenigsberg
White & Case
1155 Avenue of the Americas
New York, NY 10036

Michael W. Fabor
Reid & Priest
Market Square
701 Pennsylvania Avenue, N. W.
Washington, DC 20004

Laurie Hughes
SESAC Inc.
55 Music Square East
Nashville, TN 37203

Michael E. Glover
1710 H Street, N.W.
Washington, DC 20006

Richard R. Zaragoza
Martin R. Leader
Gregory L. Masters
Fisher Wayland Cooper & Leader
1255 23rd Street, N.W.
Suite 800
Washington, DC 20037

Dennis P. Cesari
Assistant Vice President --
Management Services
Station KOMU-TV
Highway 63 South
Columbia, MO 65201

Gerald Stevens-Kittner
Arter & Hadden
1801 K Street, N.W.
Suite 400K
Washington, DC 20006

David Cosson
National Telephone Cooperative Assn.
2626 Pennsylvania Avenue, N.W.
Washington, DC 20037

Wade H. Hargrove
Tharrington Smith & Hargrove
209 Fayetteville Street Mall
Raleigh, NC 27602

Phil Roberts
President
New Jersey Broadcasters Assn.
7 Centre Drive
Suite 1
Jamesburg, NJ 08831

Carl C. Smith
Executive Director
Oklahoma Association of Broadcasters
6520 North Western
Suite 104
Oklahoma City, OK 73116

John L. Grow
Counsel
New York State Commission on Cable Television
Corning Tower Building
Empire State Plaza
Albany, NY 12223

Gene M. Bensen
Mayor
City of Palm Desert
73-510 Fred Waring Drive
Palm Desert, CA 92260

Irwin G. Krasnow
Verner Liipfert Bernhard McPherson & Hand
901 15th Street, N.W.
Washington, DC 20005

Ramsey L. Woodworth
Wilkes Artis Hedrick & Lane, Chartered
1666 K Street, N.W.
Washington, DC 20006

Deborah C. Costlow
Winston & Strawn
1400 L Street, N.W.
Suite 700
Washington, DC 20005

Ronald B. Mallard
Cable Television
Administrator/Director
Fairfax County Department
of Consumer Affairs
12000 Government Center Parkway
Fairfax, VA 22035

Gary Epstein
Karen Brinkman
Latham & Watkins
Suite 1300
1001 Pennsylvania Avenue, N.W.
Washington, DC 20004

William B. Klaus
Vice-President
Media-Com Television, Inc.
P. O. Box 2170
Akron, OH 44309-2170

Michael Brinks
Station Manager
KWBI-TV
Colorado Christian University
1607 W. Belleview Avenue
Morrison, CO 8046-4648

Christopher I. Reynolds
Western Broadcasting Corporation
of Puerto Rico
P.O. Box 2809
Prince Frederick, MD 20678

Richard S. Rodin
William R. Reyner, Jr.
Jacqueline P. Cleary
Hogan & Hartson
555-13th Street, N.W.
Washington, DC 20004-1109

James L. Winston
Walter E. Diercks
Rubin, Wiston, Diercks,
Harris & Cooke
1730 M Street, N.W.
Suite 412
Washington, DC 20036

Russell J. Schwartz
Horack Talley Pharr & Lowndes
2600 First Union Center
301 South College Street
Charlotte, NC 28202

Harry F. Cole
Bechtel & Cole
1901 L Street, N.W.
Washington, DC 20036

John I. Stewart, Jr.
Katherine K. White
Crowell & Moring
1001 Pennsylvania Avenue, N.W.
Washington, DC 20004

John D. Pellegrin
John D. Pellegrin, Chartered
1140 Connecticut Avenue, N.W.
Suite 606
Washington, DC 20036

Josephine S. Trubek, Esq.
General Counsel
Rochester Telephone Corp.
180 S. Clinton Ave.
Rochester, NY 14646-0700

Andrew Jay Schwartzman, Esq.
Media Access Project
2000 M Street, N.W.
Washington, D.C. 20036

Dan Morales, Esq.
Attorney General of Texas
Texas Attorney General's Office
P.O. Box 12548
Austin, TX 78711-2548

J. Joseph Curran Jr., Esq.
Attorney General of Maryland
200 St. Paul Place
19th Floor
Baltimore, MD 21202

Lee Fisher, Esq.
Attorney General of Ohio
65 East State Street
Suite 708
Columbus, OH 43266-0590

Ernest D. Preate, Jr. Esq.
Attorney General of Pennsylvania
1435 Strawberry Square
Harrisburg, PA 17120

Robert L. Hoegle, Esq.
Timothy J. Fitzgibbon, Esq.
Carter, Ledyard & Milburn
1350 I St. N.W.
Washington, DC 20005

Douglas W. McCormick
Group Vice President
Hearst/ABC Viacom Entertainment Services
36-12 35th Ave.
Astoria, NY 11106

John B. Richards, Esq.
Keller and Heckman
1001 G. St., N.W.
Suite 500 West
Washington, DC 20001

David B. Gluck
Mark R. Boyes
600 Las Colinas Blvd.
Suite 2200
Irvin, TX 75039

J. Baller, Esq.
Baller Hammett, P.C.
1225 Eye St., N.W.
Washington, D.C. 20005

Floyd S. Keene, Esq.
Pamela J. Andrews
Ameritech
Rm. 4H74
2000 West Ameritech Center Drive
Hoffman Estates, IL 60196-1025

Mark L. Evans, Esq.
Alan I. Horowitz, Esq.
Anthony F. Shelley
Miller & Chevalier
655 15th St., N.W.
Washington, DC 20005

William B. Barfield, Esq.
Thompson T. Rawls, II
BellSouth
Suite 1800
1155 Peachtree Street, N.E.
Atlanta, GA 30367-6000

Donna Colman Gregg, Esq.
Wiley, Rein & Fielding
1776 K Street, N.W.
Washington, DC 20006

Rose Helen Perez
Times Mirror Cable Television
2381-2391 Morse Avenue
Irvine, CA 92714

James T. Hanon, Esq.
1020 19th St., N.W.
Suite 700
Washington, DC 20036

Kenneth R. Logan
Joseph F. Tringal
Simpson, Thatcher & Bartlett
425 Lexington Ave.
New York, NY 10017

George Ring
67A Mountain Blvd. Extension
Warren, NJ 07060

Arthur J. Steinhauer
Sabin, Besmant & Gould
350 Madison Ave.
New York, NY 10017

Ward W. Wueste
Marceil F. Morrell
P.O. Box 152092
Irving, TX 75015-2092

Joseph Van Eaton
Frederick E. Ellrod, III
Miller & Holbrooke
1225 19th St., N.W.
Washington, DC 20036

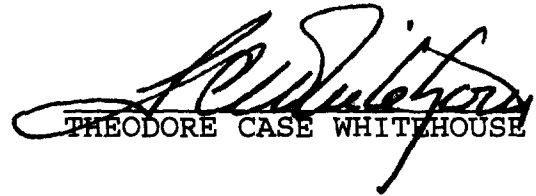
Julian K. Quattlebaum, III
Prime Ticket Network
1000 Santa Monica Blvd.
Los Angeles, CA 90067

Mark Webber
Sammons Communications
3010 LBJ Freeway
Suite 800
Dallas, TX 75243

Diane S. Killory
Joan E. Neal
Morrison & Foerster
2000 Pennsylvania Ave., NW
Suite 5500
Washington, DC 20036

Mark D. Ramey
Provo Cable Co.
1013 East 590 South
Orem, Utah 84058

J. Bruce Irving
Bailey, Hunt, Jones & Busto
Courvoisier Centre, Suite 300
501 Brickell Key Drive
Miami, FL 33131-2623



THEODORE CASE WHITEHOUSE